

FIRST REGULAR SESSION

HOUSE BILL NO. 901

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FUNDERBURK.

2171L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 389, RSMo, by adding thereto six new sections relating to utilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 389, RSMo, is amended by adding thereto six new sections, to be known as sections 389.585, 389.586, 389.587, 389.588, 389.589, and 389.591, to read as follows:

389.585. 1. As used in sections 389.585 to 389.591, the following terms mean:

(1) "Crossing", the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way by a utility when the right-of-way is owned by a land management company and not a registered rail carrier;

(2) "Direct expenses", includes, but is not limited to, any or all of the following:

(a) The cost of inspecting and monitoring the crossing site;

(b) Administrative and engineering costs for review of specifications and for entering a crossing on the railroad's books, maps, and property records and other reasonable administrative and engineering costs incurred as a result of the crossing;

(c) Document and preparation fees associated with a crossing and any engineering specifications related to the crossing;

(d) Damages assessed in connection with the rights granted to a utility with respect to a crossing;

(3) "Facility", any cable, conduit, wire, pipe, casing pipe, supporting poles and guys, manhole, or other material or equipment that is used by a utility to furnish any of the following:

(a) Communications, video, or information services;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18 (b) Electricity;
- 19 (c) Gas by piped system;
- 20 (d) Petroleum or petroleum products by piped system;
- 21 (e) Sanitary and storm sewer service;
- 22 (f) Water by piped system;
- 23 (4) "Land management company", an entity that is the owner, manager, or agent
- 24 of a railroad right-of-way and is not a registered rail carrier;
- 25 (5) "Railroad" or "railroad corporation", a railroad corporation organized and
- 26 operating under chapter 388, or any other corporation, trustees of a railroad corporation,
- 27 company, affiliate, association, joint stock association or company, firm, partnership, or
- 28 individual, which is an owner, operator, occupant, lessee, manager, or railroad right-of-
- 29 way agent, or the railroad or railroad corporation's successor in interest;
- 30 (6) "Railroad right-of-way", includes one or more of the following:
- 31 (a) A right-of-way or other interest in real estate that is owned or operated by a
- 32 land management company and not a registered rail carrier;
- 33 (b) Any other interest in a former railroad right-of-way that has been acquired or
- 34 is operated by a land management company or similar entity;
- 35 (7) "Special circumstances", includes either or both of the following:
- 36 (a) The characteristics of a segment of a railroad right-of-way not found in a typical
- 37 segment of a railroad right-of-way that enhance the value or increase the damages or the
- 38 engineering or construction expenses for the land management company associated with
- 39 a proposed crossing, or to the current or reasonably anticipated use by a land management
- 40 company of the railroad right-of-way, necessitating additional terms and conditions or
- 41 compensation associated with a crossing;
- 42 (b) Variances from the standard specifications requested by the land management
- 43 company;
- 44
- 45 "Special circumstances" may include, but is not limited to, the railroad right-of-way
- 46 segment's relationship to other property, location in urban or other developed areas, the
- 47 existence of unique topography or natural resources, or other characteristics or dangers
- 48 inherent in the particular crossing or segment of the railroad right-of-way;
- 49 (8) "Telecommunications service", the transmission of information by wire, radio,
- 50 optical cable, electronic impulses, or other similar means. As used in this definition,
- 51 "information" means knowledge or intelligence represented by any form of writing, signs,
- 52 signals, pictures, sounds, or any other symbols;
- 53 (9) "Utility", shall include:

- 54 (a) Any public utility subject to the jurisdiction of the public service commission;
55 (b) Providers of telecommunications service;
56 (c) Any electrical corporation which is required by its bylaws to operate on the not-
57 for-profit cooperative business plan, with its consumers who receive service as the
58 stockholders of such corporation, and which holds a certificate of public convenience and
59 necessity to serve a majority of its customer-owners in counties of the third classification
60 as of August 28, 2003;
61 (d) Any rural electric cooperative; and
62 (e) Any municipally owned utility.

389.586. 1. After thirty days from the mailing of the notice, completing the
2 engineering specifications, and payment of the fee, the utility, absent a claim of special
3 circumstances, shall be deemed to have authorization to commence the crossing activity.

4 2. The land management company and the utility shall maintain and repair its own
5 property within the railroad right-of-way and bear responsibility for its own acts and
6 omissions, except that the utility shall be responsible for any bodily injury or property
7 damage that typically would be covered under a standard railroad protective liability
8 insurance policy.

9 3. A utility shall have immediate access to a crossing for repair and maintenance
10 of existing facilities in case of emergency.

11 4. Applicable engineering standards shall be complied with for utility facilities
12 crossing railroad rights-of-way.

13 5. The utility shall be provided an expedited crossing, absent a claim of special
14 circumstances, after payment by the utility of the standard crossing fee, if applicable, and
15 submission of completed engineering specifications to the land management company. The
16 engineering specifications shall address the applicable clearance requirements as
17 established by the National Electrical Safety Code.

18 6. The utility and the land management company may agree to other terms and
19 conditions necessary to provide for reasonable use of a railroad right-of-way by a utility.

389.587. Unless otherwise agreed by the parties and subject to section 389.588, a
2 utility that locates its facilities within the railroad right-of-way for a crossing, other than
3 a crossing along a state highway, shall pay the land management company a one-time
4 standard crossing fee of seven hundred fifty dollars for each crossing plus the costs
5 associated with modifications to existing insurance contracts of the utility and the land
6 management company. The standard crossing fee shall be in lieu of any license, permit,
7 application, plan review, or any other fees or charges to reimburse the land management
8 company for the direct expenses incurred by the land management company as a result of

9 the crossing. The utility shall also reimburse the land management company for any actual
10 flagging expenses associated with a crossing in addition to the standard crossing fee.

389.588. 1. Notwithstanding the provisions of section 389.586, nothing shall prevent
2 a land management company and a utility from otherwise negotiating the terms and
3 conditions applicable to a crossing or the resolution of any disputes relating to the crossing.

4 2. Notwithstanding subsection 1 of this section, the provisions of this section shall
5 not impair the authority of a utility to secure crossing rights by easement pursuant to the
6 exercise of the power of eminent domain.

389.589. 1. If the parties cannot agree that special circumstances exist, the dispute
2 shall be submitted to arbitration. Any party proposing informal arbitration shall serve an
3 arbitration notice detailing a description of the dispute, including, without limitation, the
4 position and proposed resolution of the party requesting arbitration and shall name one
5 arbitrator chosen by that party. Within twenty days after receipt of an arbitration notice,
6 the receiving party shall serve a written notice on the other party containing a detailed
7 response to the claim giving the position and proposed resolution of the receiving party,
8 and an acceptance of the arbitrator designated in the arbitration notice or rejection of
9 same and suggestion of no less than two other alternatives. The informal arbitration shall
10 be decided by a single arbitrator. In the event that the parties do not agree on the selection
11 of an arbitrator within seven business days after service of the reply notice, either party
12 may apply to the American Arbitration Association for the purpose of appointing an
13 independent arbitrator. To the extent practicable, the arbitrator shall be a person with
14 expertise in the principal areas of dispute.

15 2. A conference shall be commenced by the arbitrator within fifteen calendar days
16 after the appointment of the arbitrator and a recommendation regarding the matter
17 submitted shall be rendered within ten business days after the conference or as soon as
18 practicable thereafter. During the thirty calendar days following the filing of the
19 arbitration notice, the parties shall meet and confer to attempt to resolve the dispute. The
20 decision of the arbitrator and the rationale for its decision shall be in writing and signed
21 by the arbitrator; provided, however, that such written recommendation shall have no
22 evidentiary value and shall not be deemed to set forth any findings of fact for purposes of
23 any future proceedings. Except as otherwise provided in this section, the informal
24 arbitration shall be held in accordance with the rules and procedures of the American
25 Arbitration Association. Each party shall bear its own expenses, including, without
26 limitation, legal and accounting fees, and the cost of the arbitrator shall be shared equally
27 by each party. The parties may or may not elect to abide by the decision of the arbitrator.

28 **3. If the parties cannot resolve their dispute based on the arbitrator's**
29 **recommendation within thirty days, either party may, upon the expiration of the thirty-day**
30 **period, give written notice to the other party of the commencement of a binding arbitration**
31 **proceeding in accordance with the commercial rules of Arbitration in the American**
32 **Arbitration Association. Any decision by the board of arbitration shall be final, binding,**
33 **and conclusive as to the parties. Nothing provided in this section shall prevent either party**
34 **from submission of disputes to the court, limited to requests for injunctive or equitable**
35 **relief in advance of a breach or threatened breach of this agreement, if necessary to**
36 **prevent serious and irreparable injury to such party or the public and if such injury**
37 **cannot be appropriately addressed by informal or formal arbitration.**

38 **4. If the dispute over special circumstances concerns only the compensation**
39 **associated with a crossing, then the utility may proceed with installation of the crossing**
40 **during the pendency of the arbitration.**

389.591. 1. Notwithstanding any provision of law to the contrary, sections 389.585
2 **to 389.591 shall apply in all crossings of railroad rights-of-way involving a land**
3 **management company and a utility and shall govern in the event of any conflict with any**
4 **other provision of law.**

5 **2. The provisions of sections 389.585 to 389.591 shall apply to a crossing**
6 **commenced prior to August 28, 2013, if an agreement concerning the crossing has expired**
7 **or is terminated and to a crossing commenced on or after August 28, 2013.**

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